



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,452	06/22/2000	Fredric R. Bloom	0942.4970001/RWE/BJD	7893

26111 7590 07/29/2003

STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER

LAMBERTSON, DAVID A

ART UNIT PAPER NUMBER

1636

23

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/599,452

Applicant(s)

BLOOM ET AL.

Examiner

David A. Lambertson

Art Unit

1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

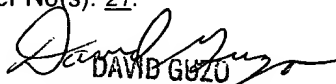
Claim(s) allowed: 48-96 and 106-126.

Claim(s) objected to: 42,43,45-47,97,103-105 and 130-138.

Claim(s) rejected: 139-149.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 21.
10. ☐ Other: _____


DAVID GUZO
PRIMARY EXAMINER

Continuation of 2. NOTE: the amendment to claims 42, 97 and 147 raises new issues regarding the indefiniteness of the claims because it is now unclear as to whether the claim is referring to a purified culture of cells or a mixed culture of cells by the indication of "One or more E. coli cells". Additionally, the claims as they now read encompass multiple embodiments that were not previously contemplated. This also raises new indefiniteness issues regarding the antecedent basis of the depending claims, as it would be unclear as to which E. coli strain in the potential mixed population was being referred to. As stated previously in the Final Action, it would be remedial to use an article (e.g., "A", "An" or "The") to begin the claim.

Continuation of 5. does NOT place the application in condition for allowance because: the statement regarding the deposit of biological material is unclear. Applicant has not clearly indicated which of the deposited strains will have their restrictions irrevocably removed upon the granting of the patent, and they have not specifically indicated which deposited strains are known and readily available to the public. In addition, applicant's amendment of claims 42, 97 and 147 to read "One or more E. coli cells" does not overcome the objection to the claims, and in fact raises new indefiniteness issues regarding whether the claim is supposed to read on a pure culture of cells or a mixed culture of cells, etc. The claim also encompasses multiple new embodiments that were not previously contemplated as a result of the new language.